

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TIMOTHY J. BUNCE,

Plaintiff,

v.

5:19-CV-266
(TWD)

FARM SERVICE AGENCY, USDA,

Defendant.

APPEARANCES:

OF COUNSEL:

TIMOTHY J. BUNCE
Plaintiff Pro Se

HON. GRANT C. JAQUITH
United States Attorney
Northern District of New York

WILLIAM F. LARKIN, ESQ.
Assistant United States Attorney

THÉRÈSE WILEY DANCKS, United States Magistrate Judge

ORDER

Presently before the Court in this case involving a challenge to federal agency action pursuant to 7 U.S.C. § 6999, and the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (“APA”) is Plaintiff’s motion for relief from agency action pending judicial review. (Dkt. No. 37.) Defendant opposes the motion. (Dkt. No. 43.) For the reasons that follow, the Court denies the motion.

By this motion, Plaintiff apparently requests relief enjoining Defendant from complying with its mandatory requirements to notify him of his default related to payment of real estate taxes during the pendency of this action. (*See generally* Dkt. No. 37.) In his amended complaint, Plaintiff seeks review of adverse action by the Defendant which he appealed to the United States Department of

Agriculture, Office of the Secretary, National Appeals Division (“NAD”). (*See generally* Dkt No. 29.) More specifically, Plaintiff seeks judicial review in this action of the NAD’s final agency decisions related to his requests for primary loan servicing with respect to an existing loan, for which Plaintiff’s real property was part of the collateral, as well as a request for a new loan. (*See id.*) Because Plaintiff had not paid the real property taxes on the collateral property, and because Oswego County, the taxing entity, issued a Tax Enforcement Notification regarding potential foreclosure on the real property due to the delinquent taxes, the Defendant issued required loan servicing notices to Plaintiff related to the real property tax delinquency and paid the outstanding taxes while this action was pending. (Dkt. No. 43-1 ¶ 18.) Additionally, Defendant agreed to extend the deadline for submission of any information to Defendant required by the notices indefinitely pending resolution of this action. *Id.* ¶ 26. Consequently, Plaintiff is not prevented from reapplying for loan servicing once this matter is resolved.

Preliminary injunctive relief “is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Moore v. Consol. Edison Co. of N.Y.*, 409 F.3d 506, 510 (2d Cir. 2005) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). “The district court has wide discretion in determining whether to grant a preliminary injunction.” *Id.* at 511. To succeed on a motion for preliminary injunctive relief, a plaintiff must demonstrate irreparable harm and either a substantial likelihood of success on the merits of the claim, or sufficiently serious questions going to the merits and a balance of hardships tipping decidedly in his favor. *Citigroup Global Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010).

Here, Plaintiff has failed to demonstrate he will be irreparably harmed without the requested

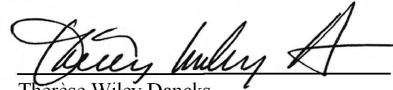
injunction since Defendant is required to provide Plaintiff with another opportunity to reapply for loan servicing once this District Court appeal is resolved. Plaintiff has also failed to establish he has a substantial likelihood of success on the merits to prevent Defendant from complying with its mandatory requirements to notify him of his failure to pay real property taxes.

Therefore, after careful consideration of the parties' arguments on the motion, and the applicable law, it is hereby,

ORDERED, that Plaintiff's motion (Dkt. No. 37) for relief from agency action pending judicial review is **DENIED**.

SO ORDERED.

Dated: July 1, 2020
Syracuse, New York


Therese Wiley Dancks
United States Magistrate Judge